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FM AMEMBASSY JAKARTA
TO RUEHC/SECSTATE WASHDC 6070
RUEATRS/DEPT OF TREASURY WASHDC
INFO RUEHHS/ASSOCIATION OF SOUTHEAST ASIAN NATIONS
RUCPDO/DEPT OF COMMERCE WASHDC
RUEHKO/AMEMBASSY TOKYO 0736
RUEHBJ/AMEMBASSY BEIJING 4271
RUEHBY/AMEMBASSY CANBERRA 1108
RUEHUL/AMEMBASSY SEOUL 4166
RUEAIIA/CIA WASHDC

UNCLAS SECTION 01 OF 03 JAKARTA 002438

SIPDIS

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SENSITIVE

DEPT FOR EAP/MTS AND EB/IFD/OMA
TREASURY FOR IA-BAUKOL
SINGAPORE FOR BAKER
COMMERCE FOR 4430/BERLINGUETTE
DEPARTMENT PASS FEDERAL RESERVE SAN FRANCISCO-FINEMAN
DEPARTMENT PASS EXIM BANK

E.O. 12958: N/A

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SUBJECT: INDONESIA - CORPORATE SOCIAL RESPONSIBILITY REQUIREMENT
CREATES CONFUSION

1. (U) Summary. The new limited liability company law has created great confusion in the business community by mandating that "natural resources" companies engage in corporate social responsibility (CSR) activities. The law is very vague and domestic business leaders have already raised objections. International businesses chambers, including the American Chamber of Commerce are still unsure what the potential impact could be. Attention is now focused on the Ministry of Finance, which will draft the implementing regulations to flesh out the precise CS requirements companies will face. End Summary.

Limited Liability Legislation:
Surprise on Corporate Social Responsibility

2. (SBU) Parliament (DPR) passed draft a new law on limited liability companies on July 20, 2007, which awaits Presidential signature and numbering. Article 74 of this law has created a great deal of concern among both foreign and domestic businesses in Indonesia. The article states that "resource based" companies are obligated to contribute to corporate social responsibility (CSR) programs. (See unofficial translation at paragraph 7). The inclusion of this article came as a surprise to any business leaders and was reportedly inserted at the last minute by Members of Parliament.

Indonesian Business Objects

3. (U) The Indonesian Chamber of Commerce (KADIN) and other business associations have issued a joint statement objecting to Article 74. KADIN Chairman Hidayat noted that KADIN would firmly reject any implementing regulations (which have yet to be promulgated by the Ministry of Finance) that would require a certain percentage of profit be diverted to CSR. According to KADIN, such a requirement would simply constitute a tax on business. Rafendi Djamin, coordinator of Human Rights Watch Group, said a legal instrument is needed to force companies to be socially responsible and was pleased that Indonesia would be the first country to pass such a law.

International Business Confused

4. (SBU) The American Chamber of Commerce (AmCham) held a well-attended meeting of over 20 companies on August 9 to discuss the CSR legislation. AmCham members commented that Article 44 - as currently drafted and in the absence of implementing regulations - is unclear on several counts. Specifically, the new law:

- fails to define CSR;
- does not designate a government agency to oversee CSR activities;
- does not discuss possible sanctions for noncompliance;
- designate approved recipients of CSR funds; or
- clarify what is meant by a "natural resource" company.

Not all AmCham members are worried. One representative of a major oil and gas company suggested that western firms have "nothing to worry about" since they already have significant CSR programs. AmCham members concluded it would be wise to team up with other business chambers, to discuss international best practices of CSR with the relevant ministries, and to educate GOI officials and Parliament about what many businesses are already doing in CSR.

Re-Election Pork?

5. (SBU) There are several theories about what led Parliament to insert this last-minute clause into the legislation. One theory is that it is all about pork; since many officials are being elected for the first time, the CSR Article 74 may be an attempt by Members of Parliament to show constituencies they are improving their localities. This may be an attempt to bring re-election pork to home districts. Another theory suggests that domestic and regional companies are more the target than western companies. Domestic and

Asian companies, as a generalization, tend to do less community development and CSR than western ones. A related issue is that under current law, extractive industry companies are required to make an environmental impact statement and then file an environmental mitigation plan to the Ministry of Environment. Once they are finished extracting the resources, they are required to implement the environmental mitigation plan. However, many smaller Indonesian firms go out of business at the end of the resource extraction and never implement the mitigation plan, leaving the clean-up to the GOI or sub-national governments. Thus one goal of the Article 74 may be to receive CSR benefits "up front" from domestic companies.

Comment: No implementation?

¶6. (SBU) The CSR Article 74 seems to be an example of inexperienced legislators, who lack both expert staff and an adequate consultative process, passing confused and confusing legislation. The business community has three months to provide comments on the law to the Ministry of Justice and Human Rights before implementing regulations are formulated. Prominent business leader and Chairman of the Indonesian Employers' Association, Sofyan Wanandi, is recommending that the CSR requirement not be implemented, according to the head of the International Business Council, Peter Fanning. Many pieces of legislation in Indonesia which can neither be properly implemented nor enforced, simply die on the vine. Alternately, the relevant Ministry delays the regulations for years. The CSR Article 74, is so garbled, confused and hastily drafted (without consultation), it may suffer a similar fate.

¶7. (U) Text of Article 74, Unofficial Translation.

BEGIN TEXT

Limited Liability Company Law, Chapter V, Social and Environmental Responsibility, Article 74.

(1) Limited Liability Companies that conduct their businesses in the area of and/or related to natural resources are obligated to conduct Social and Environmental Responsibility.

(2) Social and Environmental Responsibility as referred to in line (1) is the obligation of the Limited Liability Company, which is budgeted and calculated as the cost of the Limited Liability Company, whereby its implementation is carried out by considering the sense of propriety and regularity.

(3) Limited Liability Companies that do not carry out their obligations as referred to in line (1) shall be sanctioned according to the stipulations of the legislation.

(4) Further stipulation on the Social and Environmental Responsibility shall be further regulated under Government Regulations.

Elucidation of Article 74

Line (1) This stipulation is aimed to maintain the establishment of a harmonious, balanced and compatible relationship between the Limited Liability Company and environment, values, norms and cultures of the local community. "Limited Liability Companies that conduct their businesses in the area of natural resources" refers to Limited Liability Companies, whose business activity manages and utilizes natural resources or whose business activity has an impact on the functions of natural resource capacity.

Line (2) Self explanatory.

Line (3) "Shall be sanctioned according to the stipulations of the legislation" refers to penalty by sanction to be regulated in the respective legislation.

Line (4) Self explanatory.

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END TEXT

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